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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,583	08/29/2003	Daniel P. Topp	TOPP-P7.1-US	8842

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/651,583

Applicant(s)

TOPP, DANIEL P.

Examiner

David J Parsley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-51 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 32-51 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

Detailed Action

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 44-48 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 5 and 7-12 of copending Application No. 10/147,745. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 45 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The limitation of the chamber being a refurbished reefer box is not found in applicant's disclosure or the disclosure of the parent application 10/145,184.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to what the weight of a forklift quantifies.

Claim 51 recites the limitations "the desired temperature and time period" and "the wood products" in lines 2-3 and lines 8-9. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-34, 36-40, 42-44, 49 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,716,676 to Imagawa.

Referring to claims 32 and 49, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A, having a first end, a second end, a left wall a right wall, a ceiling, sub-ceiling and a floor – see for example figure 2, the ceiling and sub-ceiling forming a plenum, the ceiling and floor being connected to the ends and walls to define an interior volume of the chamber – see for example figures 2-7, a door – proximate - a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a means for heating the air in the interior of the chamber – at 12,13,22, and the ceiling communicating with the interior of the chamber – see for example figures 1-7, a means for circulating air – at 22, having an inlet and an outlet, the outlet of the circulating air means connected to the inlet of the heater – see the ducting in figures 1-2, and the inlet of the circulating air means connected to the ceiling plenum – see figures 2-7, the ceiling plenum communicating with the interior of the chamber to define a continuous volume for allowing air to be moved by the circulating means through the heater into the interior of the chamber, the through the ceiling plenum and back to the circulating means – see for example figures 1-7.

Referring to claim 33, Imagawa discloses the means for heating comprises a heater – at 13, and a means for circulating the air – at 22, within the interior of the chamber – see for example figures 1-2.

Referring to claim 34, Imagawa discloses the heater comprises an indirect fired heating unit – see for example column 3 lines 1-42.

Referring to claim 36, Imagawa discloses the means for circulating the air comprises a fan assembly – at 22 utilizing a fan and electric fan motor – see for example column 3 lines 20-42.

Referring to claim 37, Imagawa discloses the fan assembly – at 22 is a duct axial fan – see for example figure 2.

Referring to claim 38, Imagawa discloses the floor is reinforced to support the weight of the forklift – see for example figure 2, which shows the floor being of a significant thickness to support heavy weights.

Referring to claim 39, Imagawa discloses the heater has an inlet for inputting air into the heater and an output for outputting heated air, the inlet and outlet communicating with the interior volume of the chamber to heat the interior volume – see for example figures 1-2 at items 2-15.

Referring to claim 40, Imagawa discloses the heater – at 12,13 communicates with the interior volume of the chamber via ducting – see for example figures 1-2.

Referring to claim 42, Imagawa discloses a sub-ceiling – proximate 27 in figure 5 and see figures 6-7, wherein the sub-ceiling and the existing ceiling forms a duct either internal to or external to the chamber – see for example figures 5-7.

Referring to claim 43, Imagawa discloses the means for heating – at 12,13 comprises an inlet for allowing air to be heated for make-up air as required to pressurize the interior of the chamber – see for example at item 12 in figures 1-2.

Referring to claim 44, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A, defining an interior volume, the chamber having a means for lifting by external

machinery – proximate 10a, 25, the chamber having first and second ends – see for example figures 1-2, a door or doors – proximate – a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a means for heating – at 12,13, the interior of the chamber, the means for heating located either on the exterior or remote of the chamber – at A – see for example figures 1-2.

Referring to claim 51, Imagawa discloses a control means – see for example columns 2-5.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 49 above, and further in view of U.S. Patent No. 6,141,901 to Johnson et al.

Referring to claims 35 and 50, Imagawa does not disclose the heater comprises a direct-fired heating unit. Johnson et al. does disclose the heater comprises a direct-fired heating unit – see for example column 1 lines 55-56. Therefore it would have been obvious to one of ordinary skill in the art to take the pest eradicating apparatus of Imagawa and add the direct-fired heating unit of Johnson et al., so as to quickly heat the device to the desired temperature.

Claims 41 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 44 above, and further in view of U.S. Patent No. 5,965,185 to Bianco or U.S. Patent No. 6,227,002 to Bianco et al.

Referring to claims 41 and 46-47 Imagawa does not disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for facilitating the movement and transportation of the chamber. Bianco and Bianco et al. do disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for facilitating the movement and transportation of the chamber – see for example figure 2 of Bianco and figure 1 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a trailer of Bianco or Bianco et al., so as to allow for the device to be movable to different locations as desired by the user. Further making a device portable does not render the claimed invention patentable over the prior art as seen in, *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952).

Referring to claim 45, Imagawa does not disclose the chamber is a refurbished reefer box. Bianco and Bianco et al. do disclose the chamber is a box – see proximate 24 of Bianco and proximate – 190 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a box of Bianco or Bianco et al., so as to allow of the chamber to be easily moved for storage or transportation.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claim 44 above, and further in view of U.S. Patent No. 3,814,315 to Dmysh. Imagawa does not disclose the chamber is a modified trailer to which the heating device is attached.

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Dmysh does disclose the chamber is a trailer to which the heating device is attached – see for example at items 16-18. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the trailer with attached heater of Dmysh, so as to allow for the heater to be movable to different locations.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with pest eradicating or sterilizing devices in general:

U.S. Pat. No. 4,961,283 to Forbes – shows pest eradication device

U.S. Pat. No. 5,203,108 to Washburn, Jr. – shows pest eradication device

U.S. Pat. No. 6,171,561 to Williamson et al. – shows pest eradication device

U.S. Pat. No. 6,383,449 to Pennekamp et al. – shows heat-sterilizing device

DE Pat. No. 4025828 – shows pest eradication device

7. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

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A handwritten signature in black ink, appearing to read "Peter Poon". The signature is fluid and cursive, with the first name "Peter" and last name "Poon" clearly distinguishable.

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600